

REMARKS

The Examiner has required an election under 35 U.S.C. § 121 of one of the following inventions:

Group I: Claims 32-39, 41, 42, 49, 50, 51, 58-66, 68, 76-78, as specifically drawn to a method of treatment of an animal comprising administering a plasmid vector comprising a myosin light chain enhancer and a myosin heavy chain promoter operatively linked to a sequence that generates a therapeutic RNA, classified in class 514, subclass 44.

Group II: Claims 32-39, 41, 42, 49, 51, 51, 58-66, 68, 76-78, as specifically drawn to a method of treatment of an animal comprising administering a viral vector comprising a myosin light chain enhancer and a myosin heavy chain promoter operatively linked to a sequence that generates a therapeutic RNA, classified in class 514, subclass 44.

Group III: Claims 32-39, 41, 42, 49, 51, 51, 58-66, 68, 76-78, as specifically drawn to a method of treatment of an animal comprising administering a plasmid vector comprising a myosin light chain enhancer and a viral promoter operatively linked to a sequence that generates a therapeutic RNA, classified in class 514, subclass 44.

Group IV: Claims 32-42, 49, 50, 51, 58-66, 68, 76-78, as specifically drawn to a method of treatment of an animal comprising administering a viral vector comprising a myosin light chain enhancer and a viral promoter operatively linked to a sequence that generates a therapeutic RNA, classified in class 514, subclass 44.

Group V: Claims 43-48, 51-57, 70-75, 78-96 as specifically drawn to a method of treatment of an animal comprising administering a plasmid vector comprising a myosin light chain enhancer and a myosin heavy chain promoter operatively linked to a sequence that generates a polypeptide, classified in class 514, subclass 44.

Group VI: Claims 43-48, 51-57, 70-75, 78-96 as specifically drawn to a method of an animal comprising administering a viral vector comprising a myosin light chain enhancer and a myosin heavy chain promoter operatively linked to a sequence that generates a polypeptide, classified in class 514, subclass 44.

Claims 51 and 78 are generic to all groups and will be examined to the extent it encompasses the elected invention.

Claims 31 to 96 are pending in the instant application. The Examiner has required restriction of these claims to one of six inventions, Groups I through VI as discussed above.

Applicants respectfully traverse the Restriction Requirement and request that the Examiner reconsider the restriction, since Groups I through VI do not represent the entire scope of the pending claims 31 to 96. None of the Groups are drawn to methods of administering a plasmid vector comprising a myosin light chain enhancer and a viral promoter operatively linked to a sequence that generates a polypeptide, as encompassed by the pending claims (see, e.g., Claims 43-48, 52-58, 67, 70-75 and 79-96); further, none of the Groups are drawn to methods of administering a viral vector comprising a myosin light chain enhancer and a viral promoter operatively linked to a sequence that generates a polypeptide, as encompassed by the pending claims (see, e.g., Claims 43-48, 52-58, 67, 70-75 and 79-96). Further, Applicants request modification of the Restriction Requirement as pending claims 67 and 69 are not included in any of the Groups I through VI. Thus, Applicants would be unduly prejudiced if the Restriction were not modified or simply withdrawn, as the pending restriction does not represent the entire scope of the claimed invention.

The Examiner contends that the inventions of Groups I through VI are distinct from each other. Applicants respectfully traverse the Restriction Requirement and assert that even assuming, *arguendo*, that Groups I through VI represent distinct or independent inventions, to search and examine the subject matter of all the Groups together would not be a serious burden on the Examiner. The M.P.E.P. § 803 (Eighth Edition August 2001, Latest Revision February 2003) states

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Applicants respectfully assert that the subject matter of the claims of Groups I through VI are so intertwined that a single search would identify any relevant art pertaining to a plasmid or viral vector containing a myosin light chain enhancer. Thus, in view of M.P.E.P. § 803, the subject matter of the claims of Groups I through VI should be searched

and examined in the subject application. Accordingly, Applicants respectfully request that the Restriction Requirement Under 35 U.S.C. § 121 be withdrawn or modified such that the subject matter of the claims of Groups I through VI, as well as the claimed subject matter not included in the Restriction are examined in one application.

In order to be fully responsive, however, Applicants hereby elect to prosecute the claims of Group III, drawn to a methods of treatment using a plasmid vector comprising a myosin light chain enhancer and a viral promoter operatively linked to a sequence that generates a therapeutic RNA, except that Applicants request that the subject matter of the group be modified to include plasmid vectors that encode a polypeptide, including therapeutic polypeptides. Thus, Group III should be modified to include Claims 43-48, 53-57, 70-75 and 79-96. Applicants make this election with traverse, without prejudice to Applicants' rights to pursue the non-elected subject matter in other applications.

Entry of the remarks made herein is respectfully requested.

Respectfully submitted,

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Anthony M. Insogna 5,203
Anthony M. Insogna (Reg. No.)

By: Jacqueline Benn 43,492
Jacqueline Benn (Reg. No.)
JONES DAY
222 East 41st Street
New York, New York 10017
(212) 326-3939